

House Bill 2834

Sponsored by Representative WITT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Standardizes definitions of "employ," "employee," "employer" and "wages" for purposes of statutes relating to hours, wages, wage claims, employment conditions, employment agencies, farm labor contractors and construction contractors.

A BILL FOR AN ACT

1
2 Relating to definitions of terms concerning employment; creating new provisions; and amending ORS
3 653.010, 658.005, 658.405 and 701.005.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 653.010 is amended to read:

6 653.010. As used in ORS 653.010 to 653.261, unless the context requires otherwise:

7 (1) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

8 (2) "Employ" includes to suffer or permit to work but does not include voluntary or donated
9 services performed for no compensation or without expectation or contemplation of compensation
10 as the adequate consideration for the services performed for a public [*employer referred to in sub-*
11 *section (3) of this section*] **body as defined in ORS 174.109**, or a religious, charitable, educational,
12 public service or similar nonprofit corporation, organization or institution for community service,
13 religious or humanitarian reasons or for services performed by general or public assistance recipi-
14 ents as part of any work training program administered under the state or federal assistance laws.

15 **(3) "Employee" means an individual employed by an employer in this state.**

16 [(3)] **(4) "Employer" means any person [*who employs another person including the State of Oregon*
17 *or a political subdivision thereof or any county, city, district, authority, public corporation or entity and*
18 *any of their instrumentalities organized and existing under law or charter*] **that employs an indi-**
19 **vidual, including a public body, as defined in ORS 174.109, and any other person acting di-**
20 **rectly or indirectly in the interest of an employer in relation to an employee.****

21 [(4)] **(5) "Minor" means any person under 18 years of age.**

22 [(5)] **(6) "Occupation" means any occupation, service, trade, business, industry, or branch or**
23 **group of industries or employment or class of employment in which employees are gainfully em-**
24 **ployed.**

25 [(6)] **(7) "Organized camp" means a day or resident camp, whether or not operated for profit,**
26 **established to give campers recreational, creative, religious or educational experience in cooperative**
27 **group living wherein the activities are conducted on a closely supervised basis, whether or not the**
28 **camp is used primarily by an organized group or by members of the public and whether or not the**
29 **activities or facilities are furnished free of charge or for the payment of a fee.**

30 [(7)] **(8) "Outside salesperson" means any employee who is employed for the purpose of and who**
31 **is customarily and regularly engaged away from the employer's place or places of business in mak-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

ing sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the nonexempt employees of the employer.

[(8)] (9) "Piece-rate" means a rate of pay calculated on the basis of the quantity of the crop harvested.

[(9)] (10) "Salary" means no less than the wage set pursuant to ORS 653.025, multiplied by 2,080 hours per year, then divided by 12 months.

[(10)] (11) "Wages" means *[compensation due to an employee by reason of employment]* **all compensation for performance of service by an employee for an employer, including penalty wages owed under ORS 652.150, whether paid by the employer or another person**, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035.

[(11)] (12) "Work time" includes both time worked and time of authorized attendance.

SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS chapter 652.

SECTION 3. As used in this chapter, unless a specially applicable definition requires otherwise, "employ," "employee," "employer" and "wages" have the meanings given those terms in ORS 653.010.

SECTION 4. ORS 658.005 is amended to read:

658.005. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

(1) "Applicant for employment" or "applicant" means an individual who is seeking or who has obtained employment through the services of an employment agency.

(2) "Charge for services" means any money or other consideration paid or promised to be paid by an applicant for employment for services rendered by an employment agency.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(4) "Employ" has the meaning given that term in ORS 653.010.

(5) "Employee" has the meaning given that term in ORS 653.010.

(6) "Employer" has the meaning given that term in ORS 653.010.

[(4)(a)] (7)(a) "Employment agency" or "agency" means a business, service, bureau or club operated by a person, firm, organization, limited liability company or corporation engaged in procuring for a fee, employment for others and employees for employers.

(b) "Employment agency" or "agency" does not include:

(A) A nursing school, business school or career school that does not charge a fee for placement.

(B) Any business, person, service, bureau, organization or club that by advertisement or otherwise offers as its main object or purpose to counsel, teach or prepare individuals to obtain employment, and which charges for its services, whether in the form of dues, tuition, membership fees, registration fees or any other valuable service.

(C) Any business, service, bureau or club operated by a person engaged in procuring employment for others when the charges for services are paid, directly or indirectly, by anyone other than the applicant for employment.

(D) An employment listing service, as defined in ORS 658.250.

(8) "Wages" has the meaning given that term in ORS 653.010.

SECTION 5. ORS 658.405 is amended to read:

658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires otherwise:

(1) "Agricultural association" means a nonprofit or cooperative association of farmers, growers

1 or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor
 2 solely on behalf of members of the association.

3 (2) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

4 (3) “Crew leader” means the member of a group of workers who (a) acts as spokesman for the
 5 group, (b) travels with the group from another state into Oregon and (c) performs the same work
 6 along with other group members. A crew leader may transport workers from their local place of
 7 residence to their place of employment so long as the crew leader does not perform this service for
 8 a profit.

9 (4) **“Employ” has the meaning given that term in ORS 653.010.**

10 (5) **“Employee” has the meaning given that term in ORS 653.010.**

11 (6) **“Employer” has the meaning given that term in ORS 653.010.**

12 [(4)] (7) “Farm labor contractor” means any person who, for an agreed remuneration or rate of
 13 pay, recruits, solicits, supplies or employs workers to perform labor for another to work in fore-
 14 station or reforestation of lands, including but not limited to the planting, transplanting, tubing,
 15 precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of
 16 brush and slash and other related activities or the production or harvesting of farm products; or
 17 who recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear
 18 grass, salal or ferns from public lands for sale or market prior to processing or manufacture; or who
 19 recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities;
 20 or who, in connection with the recruitment or employment of workers to work in these activities,
 21 furnishes board or lodging for such workers; or who bids or submits prices on contract offers for
 22 those activities; or who enters into a subcontract with another for any of those activities. However,
 23 “farm labor contractor” does not include:

24 (a) Farmers, including owners or lessees of land intended to be used for the production of tim-
 25 ber, their permanent employees, advertising media, platoon leaders or individuals engaged in the
 26 solicitation or recruitment of persons for dayhaul work in connection with the growing, production
 27 or harvesting of farm products;

28 (b) The Employment Department;

29 (c) A crew leader;

30 (d) An individual who performs work, other than recruiting, supplying, soliciting or employing
 31 workers to perform labor for another, alone or only with the assistance of the individual’s spouse,
 32 son, daughter, brother, sister, mother or father;

33 (e) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
 34 services with each other, provided the work is performed on land owned or leased by the individuals;

35 (f) An educational institution that is recognized as such by the Department of Education; or

36 (g) A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits,
 37 supplies, solicits or employs workers only for the farmer’s own operations, and has farmworkers
 38 living in the camp who are employed by another on no more than an incidental basis, and the farmer
 39 receives no remuneration by virtue of such incidental employment.

40 (8) **“Wages” has the meaning given that term in ORS 653.010.**

41 **SECTION 6.** ORS 701.005, as amended by section 4, chapter 77, Oregon Laws 2010, is amended
 42 to read:

43 701.005. As used in this chapter:

44 (1) “Board” means the Construction Contractors Board.

45 (2) “Commercial contractor” means a licensed contractor that holds an endorsement as a:

- 1 (a) Commercial general contractor level 1;
- 2 (b) Commercial specialty contractor level 1;
- 3 (c) Commercial general contractor level 2;
- 4 (d) Commercial specialty contractor level 2; or
- 5 (e) Commercial developer.
- 6 (3) “Commercial developer” means a developer of property that is zoned for or intended for use
- 7 compatible with a small commercial or large commercial structure.
- 8 (4) “Construction debt” means an amount owed under:
 - 9 (a) An order or arbitration award issued by the board that has become final by operation of law;
 - 10 (b) A judgment or civil penalty that has become final by operation of law arising from construction activities within the United States; or
 - 11 (c) A judgment or civil penalty that has become final by operation of law arising from a failure
 - 12 to comply with ORS 656.017.
- 13 (5) “Contractor” means any of the following:
 - 14 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers
 - 15 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,
 - 16 move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other
 - 17 structure, project, development or improvement attached to real estate, or to do any part thereof.
 - 18 (b) A person that purchases or owns property and constructs or for compensation arranges for
 - 19 the construction of one or more residential structures or small commercial structures with the intent
 - 20 of selling the structures.
 - 21 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential
 - 22 structure or small commercial structure as an educational experience to learn building techniques
 - 23 and sells the completed structure.
 - 24 (d) A community college district, as defined in ORS 341.005, that permits students to construct
 - 25 a residential structure or small commercial structure as an educational experience to learn building
 - 26 techniques and sells the completed structure.
 - 27 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged
 - 28 in the commercial harvest of forest products, that is engaged as an independent contractor to remove
 - 29 trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.
 - 30 (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a
 - 31 cross-connection inspector and backflow assembly tester certified under ORS 448.279.
 - 32 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid
 - 33 to clean or service chimneys.
- 34 (6) “Developer” means a contractor that owns property or an interest in property and engages
- 35 in the business of arranging for construction work or performing other activities associated with the
- 36 improvement of real property, with the intent to sell the property.
- 37 (7) **“Employ” has the meaning given that term in ORS 653.010.**
- 38 (8) **“Employee” has the meaning given that term in ORS 653.010.**
- 39 (9) **“Employer” has the meaning given that term in ORS 653.010.**
- 40 [(7)(a)] (10)(a) “General contractor” means a contractor whose business operations require the
- 41 use of more than two unrelated building trades or crafts that the contractor supervises or performs
- 42 in whole or part, whenever the sum of all contracts on any single property, including materials and
- 43 labor, exceeds an amount established by rule by the board.
- 44 (b) “General contractor” does not mean a specialty contractor or a residential limited contrac-
- 45

1 tor.

2 [(8)(a)] (11)(a) “Home improvement” means a renovation, remodel, repair or alteration by a
3 residential contractor to an existing owner-occupied:

4 (A) Residence that is a site-built home;

5 (B) Condominium, rental residential unit or other residential dwelling unit that is part of a
6 larger structure, if the property interest in the unit is separate from the property interest in the
7 larger structure;

8 (C) Modular home constructed off-site;

9 (D) Manufactured dwelling; or

10 (E) Floating home, as defined in ORS 830.700.

11 (b) “Home improvement” does not include a renovation, remodel, repair or alteration by a resi-
12 dential contractor:

13 (A) To a structure that contains one or more dwelling units and is four stories or less above
14 grade; or

15 (B) That the residential contractor performed in the course of constructing a new residential
16 structure.

17 [(9)(a)] (12)(a) “Home inspector” means a person who, for a fee, inspects and provides written
18 reports on the overall physical condition of a residential structure and the appurtenances of the
19 residential structure.

20 (b) “Home inspector” does not include persons certified under ORS chapter 455 to inspect new,
21 repaired or altered structures for compliance with the state building code.

22 [(10)] (13) “Key employee” means an employee or owner of a contractor who is a corporate of-
23 ficer, manager, superintendent, foreperson or lead person or any other employee the board identifies
24 by rule.

25 [(11)] (14) “Large commercial structure” means a structure that is not a residential structure
26 or small commercial structure.

27 [(12)] (15) “Officer” means any of the following persons:

28 (a) A president, vice president, secretary, treasurer or director of a corporation.

29 (b) A general partner in a limited partnership.

30 (c) A manager in a manager-managed limited liability company.

31 (d) A member of a member-managed limited liability company.

32 (e) A trustee.

33 (f) A person the board defines by rule as an officer. The definition of officer adopted by board
34 rule may include persons not listed in this subsection who may exercise substantial control over a
35 business.

36 [(13)] (16) “Residential contractor” means a licensed contractor that holds an endorsement as
37 a:

38 (a) Residential general contractor;

39 (b) Residential specialty contractor;

40 (c) Residential limited contractor; or

41 (d) Residential developer.

42 [(14)] (17) “Residential developer” means a developer of property that is zoned for or intended
43 for use compatible with a residential or small commercial structure.

44 [(15)(a)] (18)(a) “Residential structure” means:

45 (A) A residence that is a site-built home;

- 1 (B) A structure that contains one or more dwelling units and is four stories or less above grade;
 2 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a
 3 larger structure, if the property interest in the unit is separate from the property interest in the
 4 larger structure;
 5 (D) A modular home constructed off-site;
 6 (E) A manufactured dwelling; or
 7 (F) A floating home as defined in ORS 830.700.
- 8 (b) “Residential structure” does not mean:
 9 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
 10 nonresidential units;
 11 (B) Transient lodging;
 12 (C) A residential school or residence hall;
 13 (D) A state or local correctional facility other than a local facility for persons enrolled in work
 14 release programs maintained under ORS 144.460;
 15 (E) A youth correction facility as defined in ORS 420.005;
 16 (F) A youth care center operated by a county juvenile department under administrative control
 17 of a juvenile court pursuant to ORS 420.855 to 420.885;
 18 (G) A detention facility as defined in ORS 419A.004;
 19 (H) A nursing home;
 20 (I) A hospital; or
 21 (J) A place constructed primarily for recreational activities.
- 22 [(16)] (19) “Responsible managing individual” means an individual who:
 23 (a) Is an owner described in ORS 701.094 or an employee of the business;
 24 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
 25 construction activities of the business; and
 26 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
 27 within a period the board identifies by rule;
 28 (B) Demonstrated experience the board requires by rule; or
 29 (C) Complied with the licensing requirements of ORS 446.395.
- 30 [(17)] (20) “Small commercial structure” means:
 31 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
 32 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
 33 the highest interior overhead finish of the structure;
 34 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
 35 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
 36 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
 37 of the unit; or
 38 (c) A nonresidential structure of any size for which the contract price of all construction con-
 39 tractor work to be performed on the structure as part of a construction project does not total more
 40 than \$250,000.
- 41 [(18)] (21) “Specialty contractor” means a contractor who performs work on a structure, project,
 42 development or improvement and whose operations as such do not fall within the definition of
 43 “general contractor.” “Specialty contractor” includes a person who performs work regulated under
 44 ORS 446.395.
- 45 (22) “Wages” has the meaning given that term in ORS 653.010.

1 [(19)] **(23)** “Zero-lot-line dwelling” means a single-family dwelling unit constructed in a group of
2 attached units in which:

3 (a) Each attached unit extends from foundation to roof with open space on two sides; and

4 (b) Each dwelling unit is separated by a property line.

5
